

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Wednesday, June 17, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Marcia Weeks	Vice Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member (telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Gary Norem	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist, John Soza & Jeremy Richardson of CST Risk Management, Robert Damman, and Jen Jones of Snell & Wilmer.

Approval of Minutes of June 10, 2009 Meeting

The Commission approved the Minutes of the June 10, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Delfs abstained.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1118	Dakota Steel & Fab, L.L.C.
2C08/09-1092	Desert Devils National Team Training Center, L.L.C.
2C08/09-1263	Hineman Law Offices, P.C.
2C08/09-0770	John Tousoulis & Denise Tousoulis, husband & wife dba Silver Spoon Family Restaurant
2C08/09-1249	The Greatest Virtual Office, LLC

Andrew Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended civil penalties of \$1,000.00 be assessed against each of these employers. Mr. Wade answered questions from Mr. Parker regarding Dakota Steel & Fab, L.L.C. and Hineman Law Offices, P.C. The Commission unanimously assessed the recommended penalty of \$1,000.00 against employers #1118, 1092, 1263, 0770 and 1249 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Peach Properties HM, Inc.
299 S. Park Avenue
Tucson, AZ 85719

Site Location: 64 E. Broadway Blvd., Tucson, AZ 85701
Inspection #: F3875/313088395
Insp. Date: 03/16/09

Complaint
Yrs/Business – 25
Empl. Cov. by Insp. – 4

GROUPED SERIOUS – The alleged violations that follow have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1 – Employees were working on a mobile scaffold measuring 20' high, 5' wide and 10' long that was not fully planked between the front uprights and the guardrail supports, exposing the employees to a 35" opening on the walking/working platforms (1926.451(b)(1)).

Citation 1, item 1b - The mobile scaffold measuring 20' high, 5' wide and 10' long was tied to a two by four board that was placed horizontally across the inside of a window opening on the second floor of the building (1926.451(c)(1)ii).

Citation 1, item 1c - The mobile scaffold measuring 20' high, 5' wide and 10' long, used by employees to remove plaster from the wall of the building was lacking diagonal bracing on the frame subjecting the scaffold to racking or possible collapse during movement (1926.452(w)(1)).

Citation 1, item 1d - The mobile scaffold measuring 20' high, 5' wide and 10' long had casters and wheels that were not locked to prevent movement of the scaffold during its use (1926.452(w)(2)).

(One inspection with no violations in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The employer failed to provide a competent person qualified in scaffold erection and capable of identifying existing hazards which were dangerous to employees (1926.451(f)(7)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Employees working on a mobile scaffold measuring 20' high, 5' wide and 10' long were not trained by a qualified person in the subject matter to recognize hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards (1926.454(a)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty and circulated photographs of the scaffolds. Mr. Lujano stated that he was concerned over the scaffolding violations and stated that the Commission seems to be seeing more and more of these types of violations. Mr. Lujano moved to assess the gravity based penalty of \$2,500.00 with no adjustment factors for Citation 1, items 1, 1b, 1c and 1d for a total penalty of \$4,000.00 because the employer has been in business 25 years and due to the great risk involved to the employees. Mrs. Weeks stated that she agreed and seconded the motion. Following this discussion and inspection of the photographs, the Commission approved issuing the citations and assessed the penalty of \$4,000.00. Mr. Delfs voted nay.

Redden Construction Inc.
4131 E. Wood Street
Phoenix, AZ 85040

Complaint
Yrs/Business – 57
Empl. Cov. by Insp. – 2

Site Location: 17200 N. Del Webb Blvd., Sun City, AZ 85373

Inspection #: N4762/313398190

Insp. Date: 05/14/09

GROUPED SERIOUS – The alleged violations that follow have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1a – Two employees were working on a scaffold 25' high, 5' wide and 7' long which that did not have all the working level of the scaffold fully planked. (1926.451(b)(1). There was another instance of this violation.

Citation 1, item 1b - Two employees were working on a scaffold platform that was 25' high, 5' wide and 7' long that had planks installed so that the space between adjacent planks was more than one inch wide (1926.451(b)(1)(i). There was another instance of this violation.

Citation 1, item 1c - Two employees were working on a scaffold platform that was 25' high, 5' wide and 7' long and one of the three wooden planks did not extend over the centerline of it's supports on either end by at least 6 inches or was restrained (1926.451(b)(4). There were two other instances of this violation.

Citation 1, item 1d - Two employees were working on a scaffold platform that was 5' wide, 25' high and 7' long which was not provided with a means of access (1926.451(e)(1).

Citation 1, item 1e - Two employees were working on, under and near scaffolding which did not have toeboards or any other barrier to keep items from falling from above (1926.451(h)(1). (One inspection with no violations in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Two employees were working on a scaffold 5' wide, 7' long and 25' high that did not have guardrails or another fall protection device to prevent a fall (1926.451(g)(1).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Employees were not trained in the recognition and avoidance of hazards associated with scaffolds (1926.454(a).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. McCarthy, second of Mr. Lujano. Mr. Delfs voted nay and stated that this employer had been in business longer than the previous employer, Peach Properties, who had been in business 25 years. Based on their years in the business, the Commissioners had increased the penalty for the Peach Properties to the gravity-based penalty of \$2,500.00. He stated that the Commissioners should be consistent in the assessment of penalties, which means that Redden Construction should either be assessed a gravity based penalty, which is consistent with the reasoning for increasing the penalty for Peach Property, or the penalty for Peach Property should be reconsidered to reduce it back to the Division's recommended penalty. Mr. Lujano stated that would support increasing Redden Construction's penalty to the gravity-based penalty. Mr. Delfs stated he would support reconsideration of the penalty for Peach Property. Mr. Lujano stated that he disagreed. There being no further discussion or action on this item, the Commission moved to the next item.

T Bar H's Desert Horizon Development, Inc.
1505 W. Whispering Wind Drive
Phoenix, AZ 85085

Complaint
Yrs/Business - 7
Empl. Cov. by Insp. - 7

Site Location: 875 E. Bell Road, Phoenix, AZ 85022
Insp. #: Q7984/313085078
Insp. Date: 02/26/09

SERIOUS - Citation 1, item 1 - Two employees were working on a roof 30' above ground without utilizing a fall protection system and/or equivalent means to prevent a fall (1926.501(b)(13)).

(Two inspections in the past three years with 3 serious and 2 nonserious violations).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

Darin Perkins summarized the citation and proposed penalty as listed and described the design of the roof and proximity to the edge of the employees for Mr. Parker, who did not have access to the pictures provided. Following discussion and inspection of photographs, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,000.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

S Diamond Steel, Inc.
P.O. Box 18182
Phoenix, AZ 85005

Complaint
Yrs/Business - 10
Empl. Cov. by Insp. - 10

Site Location: 4205 W. Lower Buckeye Road, Phoenix, AZ 85009
Inspection #: A7717/313344681
Insp. Date: 05/07/09

SERIOUS - Citation 1, item 1 - Two horizontal band saws did not have the unused portion of the blade guarded (1910.212(a)(1)). There was another instance of this violation.

(One inspection with 3 nonserious violations in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

REPEAT NONSERIOUS - Citation 2, item 1 - One employee was using a half-mask respirator without a fit test being completed (1910.134(F)(1)).

S Diamond Steel Inc. was previously cited for a violation of this occupational safety and health standard or it's equivalent standard (1910.134(f)(1)), which was contained in ADOSH Inspection 312581465, Citation 1, Item 2 issued on 12/03/08.

Div. Proposal - \$ 200.00

Formula Amt. - \$ 200.00

TOTAL DIV. PROP. - \$1,450.00

TOTAL FORMULA AMT - \$1,450.00

Darin Perkins summarized the citations and proposed penalty as listed. Mr. Lujano asked why the recommended penalty was not higher for Citation 2, item 1. Mr. Perkins explained the penalty structure and that this was a nonserious violation and was only presented to the Commission because of the repeat nature. Mr. Parker questioned whether the employer had a respiratory protection plan in place and when the employees were last fit tested. Mr. Perkins responded that the employer did have a respiratory protection program but that the president stated that he was not aware employees needed to be fit tested. Following further discussion regarding calculation of penalties, the issuance of citations and the employer's abatement obligations, Mr. Parker made a motion to assess the recommended penalty of \$1,450.00 and asked that the Division conduct a follow-up investigation after the citation is issued to ensure compliance, which was seconded by Mrs. Weeks and unanimously approved.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory updated the Commissioners on the agency's contingency plan that was

submitted to the Arizona Department of Administration. Ms. McGrory responded to questions from the Commissioners regarding the plan to maintain essential services in the event the legislature is unable to pass a budget before the end of the fiscal year.

Discussion &/or Action regarding Legislation

Scot Butler described the budget negotiations between the Governor and the House and Senate. He also gave an update on legislation of interest to the Commission. Mr. Butler stated that HB2087 has just been amended and he and Ms. McGrory have not yet had the opportunity to study the changes, but the Commission continues to oppose this bill because the bill does not address some of the major concerns of the Commission. Mr. Butler and Ms. McGrory answered questions from the Commissioners regarding the bill and the use of master policies. They also explained the impact of the bill on the Commission.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session

Chairman Delfs asked if an Executive Session was needed for this agency item. Ms. McGrory and Mr. Wade stated that they did not believe an Executive Session was necessary. Mr. Wade described the status of the legal action in Superior Court. Ms. McGrory explained that counsel has filed a request for a stay and the assigned judge will hear oral argument regarding the stay on June 29, 2009.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, June 25, 2009. The Commission scheduled future meetings on Thursday, July 2nd, Wednesday, July 8th, Wednesday, July 15th and Wednesday, July 29th. There will be no meeting the week of July 19th. The annual workers' compensation claims seminar scheduled for August 14 and 15, 2009 at the Wigwam Resort was also discussed. The Commission will hold their meeting on Friday, August 15th at 1:00 p.m. at the seminar.

Ms. McGrory advised that the Commissioners have been provided with a packet regarding the setting of the 2010 average monthly wage cap, which will be an agenda item at next week's Commission meeting. A status report on self insured employers including explanations and definitions of ratios was also provided for informational purposes.

Mr. Wade presented a summary of a recent Supreme Court decision titled Carbajal vs. Phelps Dodge Corp.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:10 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Steven C. Delfs*
Chairman

By *Marvin W. Wicks*
Vice Chairman

By *Henry W. Lujano, Sr.*
Member

ATTEST:

By *John A. McCarty*
Member

Feresa Hutton
Commission Secretary

By *[Signature]*
Member